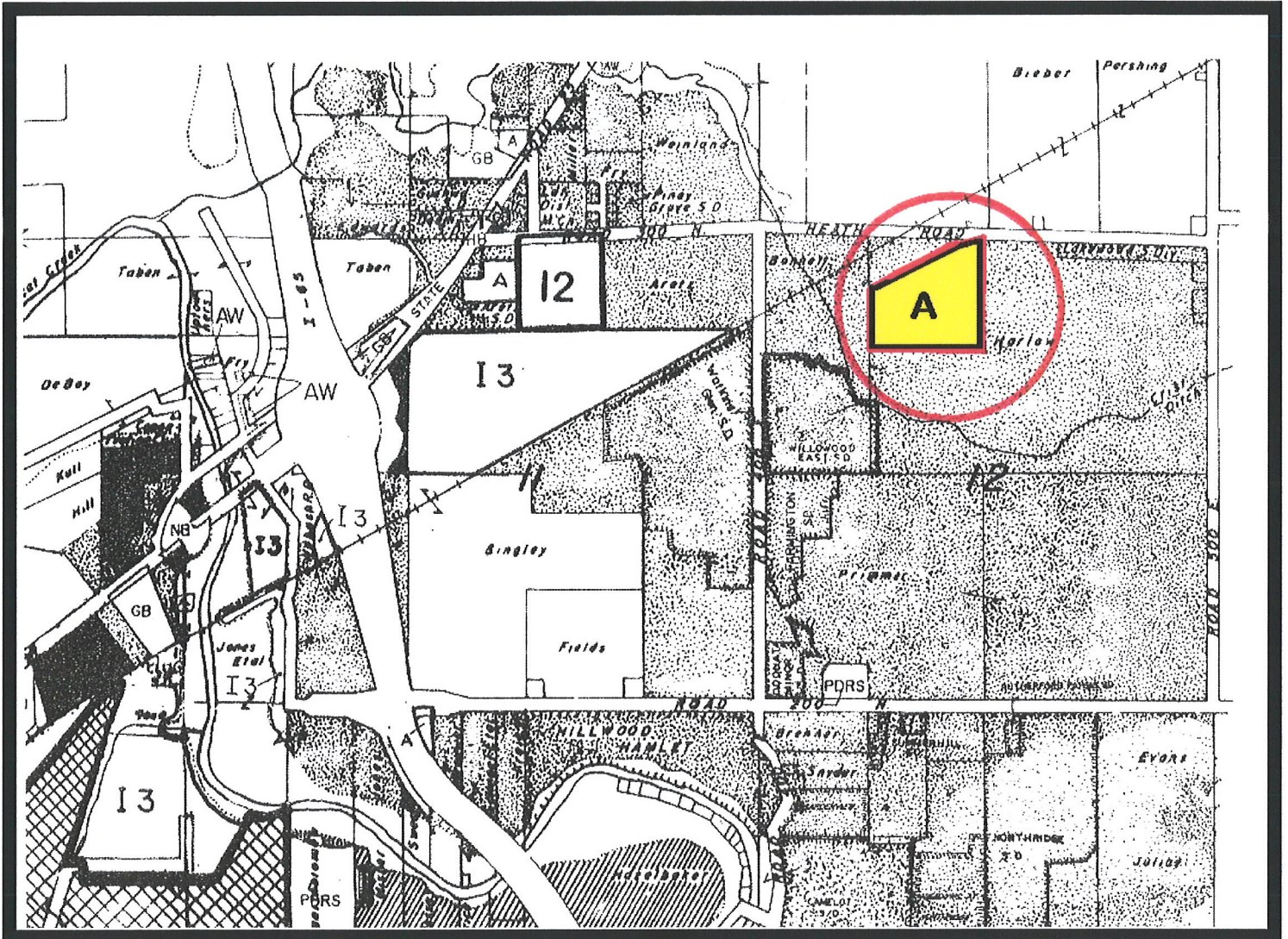

**BZA-1786 & 1787
CRIDER & CRIDER INC.
Special Exception & Variances**

**STAFF REPORTS
November 25, 2009**

**BZA- 1786
(SPECIAL EXCEPTION)
BZA-1787
(VARIANCES)
CRIDER & CRIDER, INC**



BZA-1786
CRIDER & CRIDER INC.
Special Exception

Staff Report
November 25, 2009

REQUEST MADE, PROPOSED USE, LOCATION:

Petitioners, with consent of owners and represented by Daniel Teder of Reiling, Teder and Schrier, are requesting a special exception for a proposed mining operation (SIC 14) for a grade separation of the Hoosier Heartland corridor over the railroad tracks and CR 500 E. The operation will begin December 2009; active mining will last until October 2011. Reclamation will then commence and will be completed no later than June 2012. The proposed hours of operation are 6:30 a.m. until 6:30 p.m. Monday through Saturday. The property is located directly west of 4503 E 300 N, Fairfield 12 (NW) 23-4.

AREA ZONING PATTERNS:

After a successful rezone attempt in November 2009, the subject property is zoned Agricultural (Z-2417, Crider & Crider R1 to A). Property surrounding the property is zoned R1 except to the north, across CR 300 N, which is also zoned Agricultural (A).

AREA LAND USE PATTERNS:

The site is currently a farm field. The Willowood East Subdivision, while not sharing a property line with the proposed mining operation, is located nearby to the southwest. The property owners' landholdings extend beyond the limits of this operation an additional 400' to the south, bounded by the Crist & Fassnacht Ditch. The same property owners also own the residence located directly east of the site. Land to the west is an open field.

TRAFFIC AND TRANSPORTATION:

Both CR 300 N and CR 400 E are classified as rural local roads, as are most of the roads in the immediate vicinity. Material taken from this borrow pit will be used for a bridge over the railroad tracks and CR 500 E.

Petitioners estimate that less than 25 vehicles per day, including employee vehicles and construction equipment will access the site. The haul road directly accesses the state right-of-way so that construction equipment will never enter onto CR 300 N. The staging and fueling area is also located within the state right-of-way.

CR 500 E is currently closed to through traffic between CR 300 N and 400 N. According to INDOT, CR 300 N will remain open to traffic until CR 500 E reopens sometime in the fall of 2010, at which time 300 N will close.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

Per the submitted reclamation plan, the property will return to farm field after active mining and reclamation is complete. Because this will not be a wet-bottom pond, the surveyor's cross-section requirements are not applicable.

STAFF COMMENTS:

The material removed from the proposed borrow pit will be used for the Hoosier Heartland bridge over the railroad tracks and CR 500 E. The submitted site plan indicates that no hauling equipment will enter onto a county road; since the state right-of-way is located adjacent to the property, access will be via a haul road directly to the right-of-way. All noise associated with the use will come from construction equipment, which is no more disruptive than noise from the construction of the road.

Active mining will occur December 2009 until October 2011, which is a longer time period than the several mining operations that have previously been before the Board. Reclamation of the site will be complete no later than June 2012. Mining will take place on site 12 hours per day, 6:30 a.m. until 6:30 p.m., Monday through Saturday. Since work will begin before sunrise and end after sunset, the site plan notes the location of four 32' four-head portable light towers. Each light tower uses four 1000 watt lightbulbs to illuminate 5-7 acres. According to the petition, lighting will be used from 6:30-8:30 a.m. and 5:00-6:30 p.m. during October through April when hours of daylight are fewer, which are not unreasonable hours for lighting to be in use. Two of the lights shown illuminate either side of the haul road near 300 N; the other two lights are positioned in the far southwest and southeast corners of the property, closest to nearby residential areas.

Staff has concerns about the safety of the lights with respect to passing motorists along 300 N and incompatibility with residences, especially in the early morning hours. Since 300 N will remain open through the fall of 2010 and petitioner has indicated that lighting will be used until April 2010, staff will require a condition that the lighting illuminating the haul road not create unsafe conditions for motorists. Additionally, to protect homes in the nearby subdivision, all light must be directed down and contained wholly on-site.

At its meeting on December 2, 2009 the Executive Committee of the Area Plan Commission voted that granting this request would not substantially adversely affect the Comprehensive Plan.

Regarding the ballot items:

1. Section 3.1 of the Unified Zoning Ordinance **DOES** authorize the special exception for this use (SIC 14 – Mining Operation) in this zoning district.

And it is staff's opinion that:

2. If the setback, fencing and bufferyard variances requested in BZA-1787 are approved, the requirements and development standards for the use as prescribed by the Unified Zoning Ordinance **WILL** be met.
3. Granting the special exception **WILL NOT** subvert the general purposes served by the Ordinance. In fact, the material taken from this site will be used to create a safer crossing over the railroad tracks and CR 500 E.
4. Granting the special exception **WILL NOT** materially and permanently injure other property or uses in the same district and vicinity because of:
 - a. Traffic generation: Twenty five vehicles or fewer will access this site daily, and most will be employee vehicles that will park for the duration of the workday. Additionally, no hauling equipment will enter onto CR 300 N, but rather access the construction site directly through the state right-of-way.
 - b. Placement of outdoor lighting: Lighting shown is typical of lighting used at a construction site. Additionally, lighting will only be in use four hours per day at reasonable times. With a condition limiting light spillover onto neighboring residences and to passing motorists, this lighting should not create any incompatibility.
 - c. Noise production: The noise associated with this mining operation will be no more intense than that produced by construction of the Hoosier Heartland corridor.
 - d. Hours of operation: As long as petitioner ensures no spill over light pollution onto residential areas, 6:30 a.m. until 6:30 p.m., Monday through Saturday is reasonable for this type of operation.

STAFF RECOMMENDATIONS:

Approval with the following conditions:

1. All County Surveyor requirements, which may include Drainage Board approval, must be met;
2. All lighting for the gravel pit must be directed away from motorists on CR 300 N and shall be enforceable by the Tippecanoe County Sheriff's Department; and
3. All lighting shall be directed down and away from residences in Willowood East Subdivision.

Note: A special exception approval ceases to be valid if the use is not established within one year of the date that the special exception was granted.

Staff Report
November 25, 2009

REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner, with consent of owners and represented by Daniel Teder of Reiling, Teder & Schrier, is requesting the following variances for a proposed mining operation (BZA-1786):

1. To permit a 40' setback on the south side of the property instead of the required 100' (UZO 4-4-8-a-1);
2. To eliminate the required 20' Type C 15' Type B bufferyard on all sides; and
3. To permit a typical, woven-wire farm field fence instead of the required 6' security fence on all sides

on property located directly west of 4503 E 300 N, Fairfield 12 (NW) 23-4.

For **AREA ZONING PATTERNS, AREA LAND USE PATTERNS, TRAFFIC AND TRANSPORTATION** and **ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

See BZA-1787

STAFF COMMENTS:

In response to multiple variance requests that routinely accompanied special exceptions for temporary borrow pits, the Area Plan Commission approved Ordinance Amendment 61, which included the following changes:

- Eliminate the Type C bufferyard requirement (UZO 4-9-7-c-1); and
- Permit a typical woven wire farm-field fence (minimum of 48") instead of the required 6' security fence. (UZO 4-9-7-c-1 (d))

However, the changes *only apply to mining operations lasting less than 12 months*. Petitioner's proposed mining operation will last longer than 12 months: active mining will continue nearly two years, with reclamation not complete for another 8 months after that. With a total time investment of nearly 3 years for this borrow pit, petitioner cannot take advantage of the reduced requirements for a temporary mining operation.

Petitioner is requesting a 40' setback variance for the south side of the mining operation, to eliminate the required 15' Type B bufferyard, and to install a farm field fence instead of the required 6' security fence.

The ordinance requires a 100' setback from all property lines; the setback must also be free of stockpiled materials (UZO 4-9-7(e)). The limits of the extraction area are setback at least 100' from the property line (150' as shown on the site plan) however; petitioner

has indicated there will be stockpiling of materials within the required setback. Petitioner has several options to eliminate this variance request. Staff can understand that as a practical matter, the proposed location of the overburden makes sense: there will be less traffic and interference from construction equipment. However, there are other workable options available to petitioner that do not require a variance. The site plan shows a 150' setback from the open use on all other sides, the stockpile could possibly be moved to another location that meets ordinance requirements. If there is a compelling reason to store the stockpiled material in its present location, petitioner could move the limits of the borrow pit north 50' (thus reducing the setback on the north side of the property to 100', still meeting ordinance requirements), making the setback of the stockpiled material 90'. Staff could support a variance request of 90' instead of the required 100'. Another solution is an Exemption E transfer: because the property owners' landholdings extend 400' south of the edge of the proposed pit, petitioner merely needs to "attach" 60' of the landowners' property to the south to meet the ordinance required 100' setback. However, if variance request #1 is denied and petitioner chooses the Exemption E option, another special exception request must be made because the area of the special exception will have increased and the required setback must be located wholly within the legal description.

The reclamation plan indicates that this site will return to active farming when reclamation is complete; the property owners also own the farm field to the south. The property to the west does not have an active land use and the property owners also own the residence directly east, which will be most impacted by the borrow pit. Requiring a bufferyard with plant material in the middle of a field that will be actively farmed in the foreseeable future doesn't make sense.

Staff does feel that a 6' security fence is a worthwhile safety measure to take for active mining and reclamation lasting nearly three years. This site is a relatively flat farm field with large residential areas nearby; a security fence will protect both the neighbors and petitioner. When the field is returned to active farming, the fence can be removed.

Regarding the ballot items:

1. The Area Plan Commission November 18, 2009 determined that the variances requested **ARE NOT** use variances.

And it is staff's opinion that:

2. Granting variance request #1 (setback) **WILL NOT** be injurious to the public health, safety, and general welfare of the community. Since the land owner's property extends 400' to the south, and there is only an open farm field to the south, there are no incompatibilities with adjacent land owners.

Because this property is part of a field all under the same ownership and because it will be returned to active farming, where a 15' bufferyard of plant material doesn't make sense, granting variance request #2 (bufferyard) also **WILL NOT** be injurious to the public health, safety and general welfare of the community.

Granting variance request #3 (fence) **WILL BE** injurious to the public health, safety and general welfare of the community because the mining operation and reclamation will continue for nearly 3 years; the public should be protected from active mining. A security fence will provide a necessary measure of safety.

3. Use and value of the area adjacent to the property included in variance request #1 **WILL NOT** be affected in a substantially adverse manner because the property owners' landholdings extend 400' to the south. Additionally, stockpiling of materials within the 100' setback is prompting the request; the actual borrow pit is shown well outside of the required setback.

The same landowners own most of the property surrounding this request and would not benefit from installing a bufferyard, especially since the site will be returned to farming. Therefore, use and value of the area adjacent to the property included in variance request #2 (bufferyard) **WILL NOT** be affected in a substantially adverse manner.

However, because the proposed mining operation will last almost three years, a security fence is necessary to protect surrounding uses for the duration of mining and reclamation. Therefore, use and value of the area adjacent to the property in variance request #3 (fence), **WILL BE** affected in a substantially adverse manner.

4. In regard to variance requests #1 (setback) and #2 (bufferyard) the terms of the zoning ordinance are being applied to a situation that **IS NOT** common to other properties in the same zoning district. The site in question is only part of the property owners' landholdings. Most mining operations are adjacent to property that is not also owned by the petitioner (or property owner) and the setbacks and bufferyards are necessary.

The terms of the zoning ordinance in variance request #3 (fence) are being applied to a situation that **IS** common to other properties in the same area and zoning district. There is nothing unusual about the site in terms of topography. In fact, it is a flat farm field abutting the railroad tracks, which should warrant the installation of a security fence.

5. In variance requests #1 (setback) and #3 (fence), strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance. It is only petitioner's choice to place stockpiled materials in the required setback instead of relocating the material somewhere else on site or do an Exemption E transfer. Additionally, it is solely petitioner's decision not to install a security fence.

Strict application of the terms of the zoning ordinance **WILL** result in an unusual or unnecessary hardship in variance request #2 (bufferyard). The property will return to active farming once reclamation is complete. If petitioner is required to install a 15' bufferyard it would have to be removed to permit full agricultural use of the property.

Note: Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed or solely based on a perceived reduction of or restriction on economic gain. With regard to variance #1 (setback), when selecting this location for a borrow pit, petitioner likely knew the landowners' property extended 400' to the south and could have added 60' to the site plan or moved the location of the overburden to meet ordinance requirements. With regard to variance #3 (fence), it is only petitioner's choice not to meet the ordinance standard.

The hardship involved in variance request #2 (bufferyard) **IS NOT** self-imposed. As a portion of the property owners' landholdings, this site will be returned to a farm field. Requiring a bufferyard planted in the middle of the field, which would need to be removed prior to farming, does not make sense in this instance.

5b. Variance request #1 (setback) **DOES NOT** provide only the minimum relief needed to alleviate the hardship. Because petitioner has several workable options to reduce or eliminate variance request #1, a 40' setback is not minimum relief; staff could support a variance of 90', which does represent minimum relief. Variance request #3 (fence) also **DOES NOT** provide minimum relief; the mining operation would last more than 12 months; therefore the requirements in the ordinance meant to protect neighboring uses apply.

Variance request #2 (bufferyard) **DOES** provide minimum relief because there is no need to install a Type B bufferyard in the middle of the property owners' field that will return to crop production after reclamation is complete.

STAFF RECOMMENDATION:

Request #1 (setback): Denial

Request #2 (eliminate the bufferyard): Approval

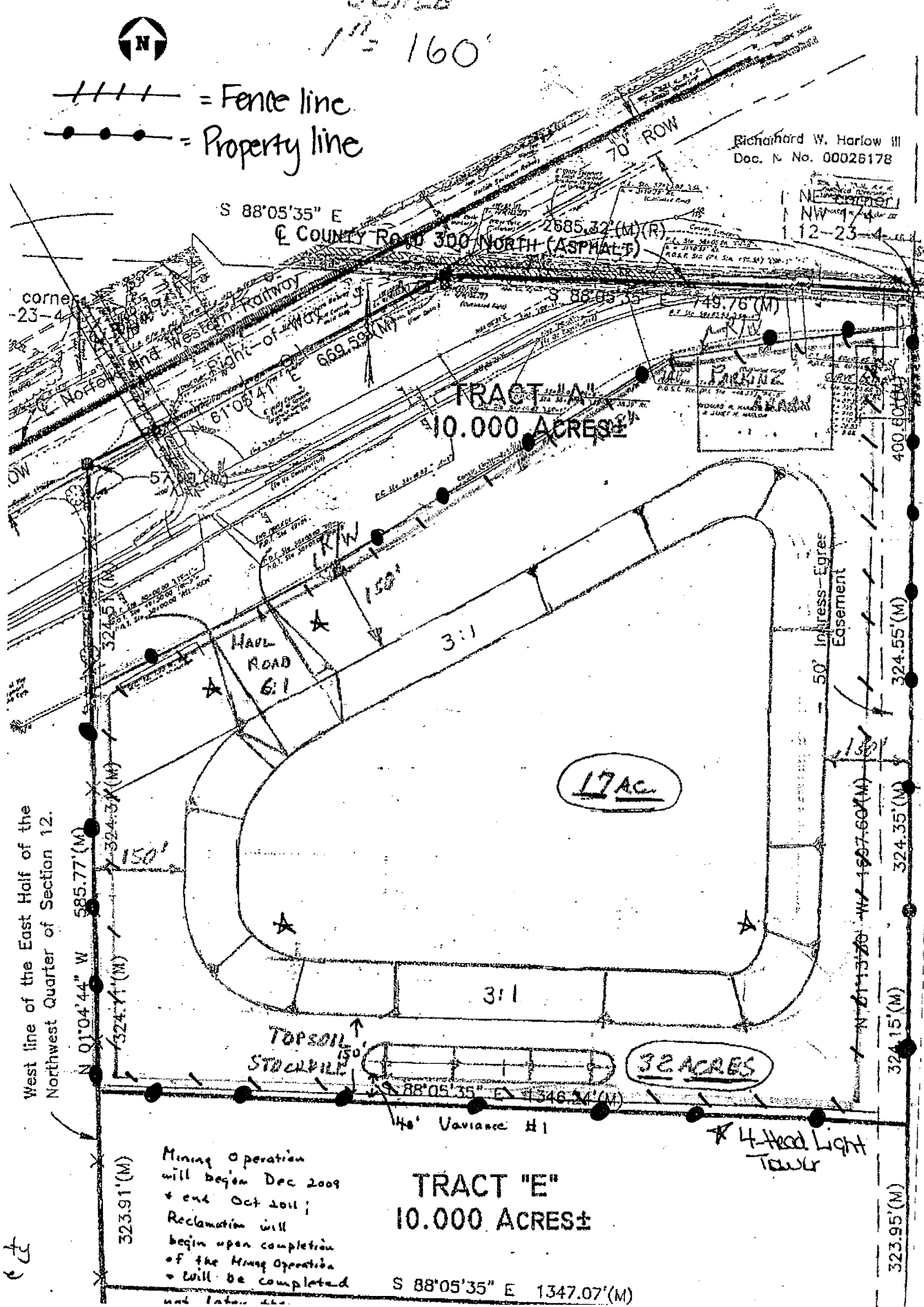
Request #3 (fence): Denial



SCALE
1" = 160'

//// = Fence line
- - - - = Property line

Richard W. Harlow III
Doc. N. No. 00026178



BZA-1786 & 1787